



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Lamb Engineering & Construction Company

**File:** B-261240

**Date:** August 25, 1995

Robert F. Babcock, Esq., Walstad & Babcock, for the protester.  
Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for High Power, Inc., an interested party.  
Stephanie Levy, Esq., Department of Energy, for the agency.  
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Bid under an invitation for bids for a construction project is nonresponsive even though it acknowledged all amendments, where the bid prices were inserted on a bid schedule which contained line items that had been deleted or revised by the amendments, without the bidder accounting on the bid schedule for the changes to the line items, because there was doubt whether the bidder had committed to perform the revised line items at its bid price.

### DECISION

Lamb Engineering & Construction Company protests an award to High Power, Inc. under invitation for bids (IFB) No. DE-FB65-95WG26460, issued by the Department of Energy (DOE), Western Area Power Administration, for the construction of the McConnico Switching Station, Stage 01, Mohave County, Arizona. Lamb alleges that DOE improperly rejected its bid as nonresponsive.

We deny the protest.

The bid schedule at section B of the IFB, as originally issued, listed 41 contract line item numbers (CLIN) covering the work and materials required to complete construction of the switching station. Bidders were required to bid on all CLINs. The bid schedule included two types of CLINs. For one type, the schedule provided estimated quantities and bidders were to offer fixed unit and extended prices. For the other CLIN type, bidders were to offer lump-sum prices. The bid schedule in

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the initial IFB included CLIN 41, "fiber optic cable," which was to be priced on a lump-sum basis; the IFB specifications at paragraph 5.10.2 described the materials, equipment, and work to be performed under this CLIN.

DOE issued three amendments to the solicitation. Amendment 001 deleted CLIN 33, "indoor electrical equipment and material," and included a revised bidding schedule reflecting this deletion. Amendment 002 stated in pertinent part:

"Delete [CLIN 41] and all associated work . . . as described in specification paragraph 5.10.2, with exception of furnishing and installing Fiber Optic Inner Duct with pre-installed pull tape as described in [p]aragraph 5.10.2.g for cable from termination point in the control building to the exit point in the cable trench. All work associated with said furnishing and installing of Fiber Optic Inner Duct shall be included in [CLIN] 23 `Conduit System.'"

Amendment 003 deleted CLIN 36, interface racks; lowered the estimated quantity for CLIN 10, a type of motor-operated disconnecting switch, from 4 to 3; and increased the estimated quantity for CLIN 26, a type of cable, from 14,000 to 15,500 linear feet. Neither amendment 002 or 003 included a revised bid schedule.

DOE received eight bids by bid opening on March 21. Lamb submitted the apparent low bid of \$1,925,000. High Power submitted the next low bid of \$1,942,542.

Upon reviewing the bids, DOE noted that Lamb had submitted its bid on the revised bid schedule provided by amendment 001 and, although it had acknowledged all of the amendments, Lamb's bid did not reflect the changes in the CLINs made by amendments 002 and 003. Specifically, Lamb's bid schedule included prices for the deleted CLINs 36 and 41, and its extended prices for CLINs 10 and 26 did not reflect the amended estimated quantities for these CLINs. Lamb was the only bidder that did not revise the bid schedule to reflect the amendments.<sup>1</sup>

DOE suspected that Lamb's bid schedule contained mistakes attributable to its failure to adjust the bid schedule to reflect the changes made by the final two amendments. The agency attempted to determine the effect of these changes on Lamb's bid by adjusting Lamb's bid schedule to reflect the requirements of the IFB as amended. Specifically, DOE subtracted the CLIN prices for the deleted CLINs 36 and 41, and recalculated the extended prices for CLINs 10 and 26 based on the amended estimated quantities. Based on the foregoing, DOE calculated Lamb's intended bid price as \$1,878,500. However, DOE did not (and could not from the face of the bid) determine the price of the portion of Lamb's CLIN 41 lump-sum

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<sup>1</sup>All but one of these other bidders amended the bidding schedule without error to reflect all the changes.

price of \$16,000 that was to be transferred from the deleted CLIN 41 and added to CLIN 23 to reflect the changes required by amendment 002.

On March 23, DOE notified Lamb that the agency suspected mistakes in Lamb's bid schedule and that Lamb's bid may not be responsive to all requirements of the bid schedule. By letter of the same date, Lamb stated that it had intended to bid a lump-sum of \$1,925,000 and provided the following explanation:

"The submitted [bid] contained the bidding schedule that was made part of [a]mendment 001 of the solicitation. Additional bidding schedules were not made a part of either [a]mendment[s] 002 or 003, but changes to the [a]mendment 001 schedule were indicated [in those amendments]. Lamb incorporated all the information contained in [a]mendments 001, 002, and 003 into our total price, but in spreading our total lump sum cost, utilized the [a]mendment 001 bidding schedule without the proper changes."

Lamb's letter then explained that the unit prices for CLINs 10 and 26 should be adjusted so that when multiplied by the amended estimated quantities, the products would equal the extended prices as stated in Lamb's bid as submitted. Lamb also stated that the lump-sum prices for the deleted CLINs 36 and 41 should be transferred in their entirety to CLINs 37 and 23, respectively.

On April 21, DOE rejected Lamb's bid as nonresponsive and awarded the contract to High Power. This protest followed.

In its protest, Lamb withdraws its explanation of its intended bid price as stated in its March 23 letter to DOE and adopts DOE's prior recalculation of its bid schedule. Lamb alleges that its failure to adjust the bid schedule was a minor informality that should be waived and award made to Lamb at the bid price of \$1,878,500.

Lamb's bid was properly rejected as nonresponsive. Even though Lamb acknowledged the amendments, by submitting a bid schedule inconsistent with the amended requirements, Lamb introduced doubt as to whether it is bound to perform the requirements of the amended IFB and as to its intended bid price.

Responsiveness concerns whether a bid constitutes an offer to perform, without exception, the exact thing called for in the IFB. 49 Comp. Gen. 553, 556 (1970); Engineering Technologies Assocs., Inc., B-250567, Feb. 10, 1993, 93-1 CPD ¶ 121. Any bid that on its face fails to offer unequivocally to comply with all of the IFB's material terms at the offered price must be rejected as nonresponsive. Main Elec. Ltd., B-224026, Nov. 3, 1986, 86-2 CPD 511. A bidder can bind itself to the contents of some amendments merely by acknowledging receipt thereof; however, when a bidder, despite acknowledging an amendment, otherwise creates doubt as to its commitment to perform pursuant to the amendment, its bid must be rejected. E.H.

Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508; Engineering Technologies Assocs., Inc., supra.

Here, Lamb acknowledged receipt of all the amendments, but entered prices for a number of CLINs that were inconsistent with the amended requirements. In particular, Lamb bid a lump sum price for CLIN 41, which had been deleted by amendment 002. As noted, although amendment 002 deleted CLIN 41, it added a portion of those work requirements to CLIN 23. Since Lamb's bid schedule priced CLIN 41, the bid on its face offered to perform the related work requirements under CLIN 41, not under CLIN 23. Although the amended RFP requires performance of a portion of the CLIN 41 work under CLIN 23, Lamb's pricing of this work under deleted CLIN 41, rather than under CLIN 23, creates doubt whether Lamb bound itself to perform this additional work at all, and particularly under CLIN 23.<sup>2</sup> Moreover, even if Lamb's bid could be interpreted as a commitment to perform this additional work, the face of Lamb's bid provides no indication as to the price bid for the portion of CLIN 41 that should be added to CLIN 23 for this work, and it is thus impossible to determine from the face of the bid a total bid price for the work as required by the amended IFB.

While our Office has permitted waiver of a defects in a bid schedule submitted by a bidder in limited circumstances where (1) the defective item is divisible from the solicitation's requirement, (2) the cost of the item is de minimis as compared to the contract's total cost, and (3) the waiver would clearly not affect the competitive standing of the bidders, see Leslie & Elliott Co., 64 Comp. Gen. 279 (1985), 85-1 CPD ¶ 212; NVT Technologies, Inc., B-256072; B-256072.2, May 6, 1994, 94-1 CPD ¶ 297, such a waiver is not applicable here because the portion of CLIN 41, the fiber optic inner duct work, which was transferred to CLIN 23 is not divisible from the contract. In this regard, the fiber optic inner duct work is material to the project and is to be installed under floors, which makes it essential and integral to, and indivisible from, the overall contract performance. NVT Technologies, Inc., supra.

In sum, Lamb's bid was subject to reasonable doubt as to whether it was based on intended compliance with the final revised requirements, or with the different requirements otherwise reflected in Lamb's bid schedule which did not reflect amendments 002 and 003. Therefore, Lamb's bid was properly rejected as nonresponsive. E.H. Morrill Co., supra; Engineering Technologies Assocs., Inc., supra.

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<sup>2</sup>Although Lamb's post-bid-opening letter cannot change the status of its bid with respect to whether it was responsive on its face at the time of bid opening, see E.H. Morrill Co., supra; Polan Indus., B-218720.2, May 30, 1985, 85-1 CPD ¶ 617, Lamb's statement in this letter that the work under CLIN 41 was not included in the price bid for CLIN 23 verifies what is otherwise apparent from the face of Lamb's bid.

The protest is denied.

\s\ Christine S. Melody  
for Robert P. Murphy  
General Counsel